D.P.U./D.T.E. 96-25-C

Petition of Massachusetts Electric Company and Nantucket Electric Company, pursuant to General Laws Chapter 164, '' 76 and 94, and 220 C.M.R. '' 1.00 et seq., for review of its electric industry restructuring proposal.

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I. INTRODUCTION

On July 14, 1997, the Department of Public Utilities, now the Department of Telecommunications and Energy ("Department") approved an offer of settlement ("Settlement") of electric industry restructuring issues, including the provisions of a wholesale rate stipulation and agreement ("Wholesale Settlement") submitted by Massachusetts Electric Company ("MECo") and Nantucket Electric Company ("Nantucket") (together, "Companies").[1] Massachusetts Electric Company, D.P.U. 96-25-A (1997). On December 10, 1997, the Companies submitted a filing to the Department pursuant to "an act relative to restructuring the electric utility industry in the Commonwealth, regulating the provision of electricity and other services, and promoting enhanced consumer protection therein" ("Act"), St. 1997, c. 164 ("December 10, 1997 Filing"). The Companies' December 10, 1997 Filing contained two parts. First, the Companies requested that the Department find that the Settlement, as approved

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[1] The original Settlement was submitted to the Department on October 1, 1996. On January 14, 1997, the Companies submitted amendments to the Settlement intended to address concerns raised by the Department ("January 14, 1997 Amended Settlement"). On February 13, 1997, the Companies submitted revisions to the January 14, 1997 Amended Settlement intended to address concerns raised by members of the Massachusetts Legislature. The Settlement was originally approved by the Department on February 26, 1997. On May 28, 1997, the Companies submitted an amended wholesale stipulation and agreement ("Amended Wholesale Settlement") to the Federal Energy Regulatory Commission ("FERC") for review, and the Companies filed an amended offer of settlement ("May 28, 1997 Amended Settlement"), which included the Amended Wholesale Settlement, with the Department for review. The Department approved the May 28, 1997 Amended Settlement on July 14, 1997. On November 25, 1997, the FERC approved, subject to a compliance filing, the Amended Wholesale Settlement. See Docket No. ER97-678-000 for New England Power Company ("NEP"), the Companies' wholesale affiliate; see also, Docket No. ER97-680-000 for NEP's Rhode Island retail affiliate, Narragansett Electric Company.

on July 14, 1997, substantially complies with or is consistent with the Act and should be allowed to be implemented. Second, the Companies have proposed several modifications to the Settlement in response to certain sections of the Act. The Companies requested that the Department find that the proposed modifications substantially comply with or are consistent with the Act and should be approved to assure that the Companies meet the requirements of the Act on a prospective basis.

Pursuant to notice duly issued,[2] the Department received comments on the Companies' December 10, 1997 Filing from the Office of the Attorney General for the Commonwealth ("Attorney General") and the Massachusetts Division of Energy Resources ("DOER") jointly, the Conservation Law Foundation ("CLF"), and Enron Capital and Trade Resources, Inc. ("Enron"), all parties to the D.P.U. 96-25 proceeding.[3]

On December 23, 1997, the Department found that the Companies' Settlement, as filed on May 28, 1997, substantially complies or is consistent with the Act. Massachusetts Electric Company, D.P.U./D.T.E. 96-25-B (1997). The Department, in D.P.U./D.T.E. 96-25-B,

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[2] On December 8, 1997, the Department issued a notice to the service list in the D.P.U. 96-25 proceeding, indicating that the Companies would be submitting a filing pursuant to the Act, and requested comments by December 17, 1997.

[3] The Department also received comments from the city of Haverhill, and the towns of Arlington and Chelmsford regarding streetlight rate design.

specifically did not address the proposed modifications to the Settlement.

On January 30, 1998, the Companies, in a proceeding related to the divestiture of New England Power Company's non-nuclear generating facilities and power purchase contracts, D.P.U./D.T.E. 97-94, informed the Department of the sale of the oil and gas properties of New England Energy, Inc. ("NEEI") (D.P.U./D.T.E. 97-94, Tr. 4, at 186). In this proceeding, the Companies proposed to implement a residual value credit to reflect the NEEI sale in the contract termination charge,[4] and return this amount to customers beginning on March 1, 1998 (D.P.U./D.T.E. 97-94, DTE-RR-12). The Companies provided rate design information to reflect the residual value credit of the NEEI sale (D.P.U./D.T.E. 97-94, DTE-RR-12 Supp.).[5]

II. SCOPE OF REVIEW

As noted, in D.P.U./D.T.E. 96-25-B, the Department did not address the proposed

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[4] The Settlement provides that upon the sale of the NEEI properties, NEP shall reconcile NEEI recovery to reflect the difference between the actual NEEI loss following the sale and the estimated NEEI loss reflected in the contract termination charge (Exh. MECo-11, vol. 2, at 53).

[5] In addition, on January 16, 1998, the Companies submitted standard offer and default service tariffs in compliance with the Department's terms and conditions order, D.P.U./D.T.E. 97-65.

modifications to the Settlement. In this Order, the Department addresses the Companies' proposed modifications to the Settlement.

III. PROPOSED MODIFICATIONS TO THE SETTLEMENT

A. Introduction

The Companies have included a demonstration of the rate reduction required by the Act (December 10, 1997 Filing at 2). In addition, the proposed modifications include implementation of a final fuel revenue credit, an increase in demand-side management and renewables charges, the unbundling of distribution rates, expansion of low-income rate eligibility, provisions for a farm discount, revision of the default and standard offer service provisions, notice period for on-site generation, a streetlight rate redesign, and procedures for providing billing information to customers (id.).

The Companies contend that the proposed modifications are required in response to the Act's requirements and that the proposed modifications substantially comply or are consistent with the relevant provisions of the Act (id. at 5).

B. Required Rate Reduction

The Companies have provided a comparison of the rate reduction provided by the Settlement with the rates in effect during August 1997 (id.). The Companies state that this comparison reflects the rate adjustments of the proposed modifications in this filing, including the Act's requirements for demand-side management ("DSM") and renewable resources (id.). In addition, the Companies provided a comparison to reflect the residual value credit of the NEEI sale (DTE-RR-12).

C. Implementation of Final Fuel Revenue Credit

The Companies, pursuant to the Settlement, have applied a fuel adjustment to billings after the retail access date for usage occurring before the retail access date (id. at 6).[6] The Companies indicate that the fuel adjustment would exceed $20 million (id.). Because of the size of the credit and the need for rate stability in the period after retail choice is introduced, the Companies propose to refund the credit over the first year following the retail access date, with interest calculated in accordance with Department precedent (id.).

D. Increase in Demand-Side Management and Renewables Charges

The Companies have proposed that the levels of funding for DSM and renewables charges which are now rolled into the Settlement rates be deducted from the distribution rates, and replaced with the factors specified in the statute (id. at 7). These factors would then change annually as required by the Act (id.).

E. Unbundling of Distribution Rates

In addition to unbundling the DSM charge and renewables charge, the Companies have relabelled the access charge as the transition charge that will now be shown separately on customers' bills (id.).

F. Expansion of Low-Income Rate Eligibility

The language in the R-2 Tariff has been modified to reflect the requirement that the low-

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6 The Settlement provides that balances in the fuel adjustment after the retail access date would be returned to or collected from customers in the first quarter after the retail access date (Exh. MECo-11, vol. 1 at 7).

income discount availability clause be expanded to include new customers in the R-2 rate class,[7] allow customers eligible for the R-2 rate to return to standard offer service at any time, and provide credit support to low-income customers. The Companies propose that the discounts to these new customers be maintained in a separate account and reconciled at the time of the implementation of the residual value credit (id. at 8). The Companies also propose a prospective adjustment in the rate design be made to reflect increased discounts, if necessary (id. at 7-8).

The Companies have also modified the tariffs to make it clear that R-2 customers may return to standard offer service at any time (id.). The Companies propose to limit credit support for suppliers in the market to the prices that would be charged by the Companies for standard offer service (id.).

G. Implement Provisions of Farm Discount

The tariffs have been revised to include a ten percent discount to customers engaged in the business of agriculture or farming (id.). The Companies have proposed that because the number of customers eligible for this service is uncertain, the discounts would be accounted for and reconciled at the time of the residual value credit, and prospective rate design changes

[7] The tariffs in other rate classes have been revised to make it clear that standard offer service would not be available to new customers in the service area.

would be implemented, if necessary (id.).

H. Revision of the Default Service Provisions

The Companies have proposed a process to comply with the Act's requirements that (1) the price for default service not exceed the average monthly market price of electricity, (2) rates remain uniform for periods of up to six months, and (3) default suppliers must be selected through a competitive bid and have the right to include a one page insert in the customer=s bill (id. at 8-9). Specifically, the Companies have proposed to pay the market clearing prices provided by the NEPOOL power exchange for default service loads (id.). This price would equal the Aaverage monthly market price of electricity@ under the Act (id.). Prior to the creation of the power exchange, the Companies would develop an interim proxy Amarket price@ that would be based on bids by suppliers (id.).

Suppliers would be asked to bid a fixed amount for the right to provide default service to the Companies' customers at the above-described prices, and would have the right to market to customers (id.). The payment bid by the winning supplier or demanded by the supplier to provide default service would be credited to or included in a default service cost adjustment provision, and charged to all customers (id.). The Companies would buy the power from the winning supplier in a traditional wholesale transaction, and resell it to customers (id.). Differences in purchased power expense and revenues billed for default service would be fully reconciled through the default service cost adjustment provision (id.).

The Companies would offer to all default service customers a payment plan featuring an optional flat monthly payment for at least six months as required by the statute (id.). Balances

in the default service account would be returned to the customer or billed to the customer at the end of the service or at the end of the budget billing period by including an adjustment on the customer=s bill (id.). The Companies would assume the bad debt risk of the retail customers for default service (id.). Termination of default service would be in accordance with Department shut off rules for termination of delivery service, and the customer arrearages for default service would be treated the same as for retail delivery service (id.).

I. Notice Period for On-Site Generation

The Companies have reduced notice periods for on-site generation in their commercial and industrial tariffs to six months (id. at 10). The Companies have proposed to maintain the notice requirements for on-site generation in the service extension discount provisions of these tariffs (id.).

J. Streetlight Rate Design

The Companies have proposed a redesign of their streetlight tariffs (id.). Rates has been unbundled to separate generation, transmission, and distribution charges from facilities ownership and maintenance costs, and to allow municipalities to purchase and maintain streetlights (id.).[8] The Companies contend that this rate design has been accomplished in a revenue neutral fashion, after providing streetlight customers with a ten percent reduction from the electricity charges in the August 1997 rates (id.).

K. Billing Information to Customers

The Companies have proposed a protocol that would be used to process all requests for

[8] Rates S-2 and S-3 have been closed to new customers.

billing information until it is superseded by new requirements or regulations by the Department (id.).

IV. COMMENTS OF THE PARTIES[9]

A. Attorney General/DOER

The Attorney General/DOER state that the Act mandated charges for DSM and renewables, and that the charges the Companies propose in the modifications should be approved. The Attorney General/DOER distinguish between charges and spending (Attorney General/DOER Comments at 3). The Attorney General/DOER contend that the DSM spending should be considered in the Department's review of the Companies' five-year energy efficiency plan (id.). The Attorney General/DOER state that, for renewables, both the charges and spending were explicitly determined by the Act (id.).

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[9] This Order addresses the comments of the Attorney General/DOER and CLF that the Department indicated in D.P.U./D.T.E. 96-25-B would be addressed in a subsequent Order. Comments by Enron were addressed in D.P.U./D.T.E. 96-25-B.

B. CLF

CLF contends that the Act's provisions on DSM and renewables not only specify funding levels, but also establish clear policy requirements and directions for their implementation (CLF Comments at 1). CLF contends that these new requirements include the enhanced role for the DOER, and prescribed actions for the Massachusetts Technology Park Corporation ("MTPC"), the advisory committee and other parties regarding the administration of the renewable energy fund (id.). CLF contends that substantial compliance requires the adoption of funding levels and policy implementation measures specifically intended by the Act (id. at 2).

V. STANDARD OF REVIEW

The Legislature has vested broad authority in the Department to regulate the ownership and operation of electric utilities in the Commonwealth. See, e.g., G.L. c. 25, '' 5, 9, 18, 19, and 20; c. 111, '' 5K and 142N; and c. 164, '' 1 through 33, 69G through 69R, 71 through 75, and 76 et seq. This authority was most recently revised and augmented by the Act. The primary goal of the Act is to establish a new electric utility "framework under which competitive producers will supply electric power and customers will gain the right to choose their electric power supplier" in order to "promote reduced electricity rates." St. 1997, c. 164, ' 1.

Among other things, the Act authorizes and directs the Department to "require electric companies organized pursuant to the provisions of [G.L. c. 164] to accommodate retail access to generation services and choice of suppliers by retail customers, unless otherwise provided by

this chapter. Such companies shall file plans that include, but shall not be limited to, the provisions set forth in this section." St. 1997, c. 164, ' 193 (G.L. c. 164, 1A(a)). Pursuant to this statutory authority, the Department will review a Company's restructuring plan for compliance with applicable provisions of the Act.

The Act sets forth explicit directions for the Department's review of restructuring plans. Plans must contain two key features. First, they must provide, by March 1, 1998, a rate reduction of 10 percent for customers choosing the standard service transition rate from the average of undiscounted rates for the sale of electricity in effect during August 1997, or such other date as the Department may determine. Id. Second, each plan must be designed to implement a restructured electric generation market by March 1, 1998 by requiring the electric company to offer retail access to all customers as of that date. Id.

Plans must also include the following important provisions:

(1) an estimate and detailed accounting of total transition costs eligible for recovery pursuant to G.L. c. 164, ' 1G(b);

(2) a description of the company's strategies to mitigate transition costs;

(3) unbundled prices or rates for generation, distribution, transmission, and other services;

(4) proposed charges for the recovery of transition costs;

(5) proposed programs to provide universal service for all customers;

(6) proposed programs and mandatory charges to promote energy conservation and demand-side management;

(7) procedures for ensuring direct retail access to all electric generation suppliers;

(8) discussions of the impact of the plan on the Company's employees and the communities served by the Company; and

(9) a mandatory charge per kilowatthour for all consumers to support the development and promotion of renewable energy projects;

Id. at ' 37 (G.L. c. 25, ' 20(a)(1)), ' 193 (G.L. c. 164, 1A(a)).

The Act directs the Department to allow the implementation of plans filed before the enactment date: "An electric company that has filed a plan which substantially complies or is consistent with this chapter [i.e., G.L. c. 164, as amended] as determined by the [D]epartment shall not be required to file a new plan, and the [D]epartment shall allow such plans previously approved or pending before the [D]epartment to be implemented." Id. at ' 193 (G.L. c. 164, ' 1A(a)). The Department is governed by the statutory directives in determining whether a plan should be approved for implementation. In doing so, the Department applies a two-part standard of review. First, for those sections of a plan governed by G.L. c. 164, the Department must determine whether the plan Asubstantially@ complies or is consistent with the Act as it amends G.L. c. 164. For all other features of the plan, the Department must determine unqualified compliance of those features with applicable provisions of the Act.

We first state the standard of review in determining whether a plan substantially complies or is consistent with G.L. c. 164. The statute directs the Department to approve any plan that was filed before enactment, provided it substantially complies or is consistent with G.L. c. 164, as amended. Id. at ' 193 (G.L. c. 164, ' 1A(a)). Although the word Asubstantially@ is not defined in the Act, its meaning may be determined from usage and context. G.L. c. 4, ' 6, cl. Third. In applying this standard, the Department considers that an action

Asubstantially complies" if it achieves Acompliance with the essential requirements" of G.L. c. 164. Black's Law Dictionary, Sixth Edition (1991). An action that is compatible with and not contradictory of a statute is "consistent" with the statute. Id. The use of these terms in the disjunctive leads to the conclusion that the Legislature has given the Department a measure of discretion to effect the important public purposes of the Act. In addition, the Legislature has mandated swift implementation of the Act (i.e., before March 1, 1998). Because the phrase Asubstantially complies or is consistent with" is imprecise, the Department supplements its understanding of the words in the statute (customarily, Athe principal source of insight into legislative purpose," Bronstein v. Prudential Insurance Co., 390 Mass. 701, 704 (1984)), with a consideration of Athe statute's purpose and history." Sterilite Corp. v. Continental Casualty Co., 397 Mass. 837, 839, n.3 (1986). A more limiting interpretation would defeat the Act's purposes and fail to give Aa fair consideration of the conditions attending its passage.@ Fickett v. Boston Fireman's Relief Fund, 220 Mass. 319, 320 (1915).

Next, we address the standard of review for those sections of a restructuring plan that are not governed by G.L. c. 164. In such instances, the Department must require unqualified compliance with the Act=s mandates. Thus, in reviewing sections of a restructuring plan not governed by G.L. c. 164, the Department must determine that those sections conform to the Act before it may approve a restructuring plan.

VI. ANALYSIS AND FINDING

In D.P.U./D.T.E. 96-25-B, the Department determined that the Settlement was consistent or substantially complied with the Act. In this Order, the Department must review

the proposed modifications to determine whether they are consistent with or substantially comply with the provisions of the Act pursuant to G.L. c. 164, and that they fully comply with any other provisions of the Act.

With respect to the implementation of final fuel revenue credit, the Companies, pursuant to the Settlement, have applied the fuel adjustment factor to billings after the retail access date for usage occurring before the retail access date. The Companies propose to refund the credit over the first year following the retail access date, with interest calculated in accordance with the Department=s precedent. The final fuel revenue credit is not approved in this Order, and should be implemented in a manner consistent with the Department's Order regarding fuel adjustment clauses, D.T.E. 98-13 (1998).

With respect to the increase in DSM and renewables charges, the Companies have proposed that the levels of funding for DSM and renewables charges that are now rolled into the Settlement distribution rates be deducted from the rates, and replaced with the factors specified in the statute. These factors would then change annually as required in G.L. c. 25, '' 19 and 20. The Companies have included the DSM and renewables charges specified by the Act. In order to ensure that these funds are properly tracked, the Department finds it appropriate to require that DSM and renewables be separately tariffed.[10] See St. 1997, c. 164, ' 37 (G.L. c. 25, ' 20(c)). Additionally, separate tariffs of DSM and renewables would further the intent of the Act that DSM and renewables charges are to be separately identified on

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[10] Consistent with this finding, the Companies are directed to modify their retail delivery tariffs to include a rate adjustment clause to specify the separate adjustment components for the DSM charge and renewables charge.

customers' bills. See St. 1997, c. 164, ' 37 (G.L. c. 25, ' 20(a)(1)). Accordingly, the Company is hereby directed to file separate DSM and renewables tariffs. With respect to the renewables spending and implementation, the Companies are directed to remit the revenues generated by the renewables charge to the MTPC as specified in the Act. G.L. c. 25, ' 20.

With respect to the unbundling of distribution rates, the Companies have restated the access charge as the transition charge, and indicated that it would be shown separately on customers' bills. The Act provides for the separation of generation, transmission, and distribution charges, as well as the transition charge. G.L. c. 164, ' 1D. Therefore, the proposed modification is consistent with the Act.

With respect to the expansion of low-income rate eligibility, the language in the R-2 tariff has been modified to reflect the requirement that the low-income discount availability clause be expanded to include new customers in the R-2 rate class (G.L. c. 164, ' 1F(4)(i)); to allow customers eligible for the R-2 rate to return to standard offer service (G.L. c. 164, ' 1F(4)(iii)); and to provide credit support to low-income customers (G.L. c. 164, ' 1F(4)(i)). In addition, the Companies' propose to limit credit support for suppliers in the market to the prices that would be charged by the Companies for standard offer service. Id. The Act provides specific language regarding eligibility for the low-income tariff, and the Companies are directed to include language from the Act in the availability clause of the tariffs. After adding the expanded language from the Act, the proposed modifications will be consistent with the Act. The Companies' proposal that the additional discounts required by the Act be accounted for, and reconciled at the time of the residual value credit is addressed by the Department's rules

governing restructuring of the electric industry, and is not approved in this Order.[11]

With respect to the implementation of the farm discount, the tariffs have been revised to include a ten percent discount to customers engaged in the business of agriculture or farming. St. 1997, c. 164 ' 315. The proposed modification fully complies with the Act. The Companies' proposal that the discounts be accounted for, and reconciled at the time of the residual value credit is addressed by the Department's rules governing restructuring of the

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[11] Each distribution company shall allocate to other rate classes, as part of a general rate case, any revenue deficiency resulting from the low-income customer tariff using an allocation method approved by the Department. 220 CMR 11.04(5)(d). The Department recognizes that the number of customers that receive distribution service under the low-income customer tariff may increase over current levels due to the eligibility criteria established in the final regulations. Distribution companies may defer costs associated with the increased number of low-income customers for consideration in a subsequent general rate case. D.P.U./D.T.E. 96-100, at 14.

electric industry, and is not approved in this Order.[12]

With respect to the revision of the default service provisions, the Companies have proposed a process to comply with the Act's requirements that (1) the price for default service not exceed the average monthly market price of electricity, (2) rates remain uniform for periods of up to six months, and (3) default suppliers must be selected through a competitive bid process and have the right to include a one page insert in the customer=s bill. G.L. c. 164, ' 1B(d). Therefore, the Companies' proposal is consistent with the Act.

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[12] Each distribution company shall allocate to other rate classes, as part of a general rate case, any revenue deficiency resulting from the farm discount using an allocation method approved by the Department. 220 CMR 11.0411.04(6)(a). The Department recognizes that distribution companies may experience under-recoveries associated with implementation of the farm discount. Distribution companies may defer costs associated with the implementation of the farm discount for consideration in a subsequent general rate case. D.P.U./D.T.E. 96-100, at 23.

With respect to the notice period for on-site generation, the Companies have reduced notice periods for on-site generation in their commercial and industrial tariffs to six months. G.L. c. 164, ' 1G(g). Pursuant to the Act, the Companies have proposed to maintain the notice requirements for on-site generation in the service extension discount provisions of these tariffs. Id. However, the Companies are directed to exempt facilities elegible for net metering from the six month notification provisions of the tariffs. See 220 CMR 11.03(4)d.

With respect to the streetlight rate design, the Companies have proposed a redesign of their streetlight tariffs.[13] Rates have been unbundled to separate, generation, transmission, distribution charges, and transition charges. G.L. c. 164, ' 1D. In addition, the Companies have separated streetlight ownership and maintenance costs to reflect the ability of municipalities to purchase and maintain streetlights. G.L. c. 164, ' 34A. The Act does not require electric companies to separate streetlight ownership and maintenance costs. While, the tariffs reflect the ability of municipalities to purchase and maintain streetlights, until municipalities negotiate to purchase streetlights, the ownership and maintenance costs should be included with distribution costs. Therefore, the Companies are directed to redesign the streetlight tariffs to include the streetlight ownership and maintenance costs with distribution costs, and provide the rate

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13 The Companies state that the rate redesign has been accomplished in a revenue neutral fashion, after providing customers with the rate reduction required by the Act. With respect to comments filed by the city of Haverhill, and the towns of Arlington and Chelmsford, neither the Settlement, nor the proposed modifications prohibit actions allowed pursuant to Section 196 of the Act. However, the Department, in D.P.U. 96-25-A approved the level of revenues collected by the Companies.

reductions from the total of all charges as required by the Act.[14]

With respect to billing information, the Companies have proposed a protocol that would be used to process all requests for billing information. G.L. c. 164, ' 1F(9). Therefore, the Companies' proposal is consistent with the Act.

The Department, in D.P.U./D.T.E. 96-25-B, found that the provisions of the Settlement were consistent or substantially complied with the Act. In this order, the Department has determined that the proposed modifications are consistent with or substantially comply with the provisions of the Act pursuant to G.L. c. 164, and that they fully comply with the other provisions of the Act.

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[14] The rate reductions required by the Act should be reflected in the streetlight tariffs. Municipalities which, pursuant to Section 196 of the Act, choose to purchase streetlights and then convert to an alternative tariff may fall outside the rate reductions requirements of the Act.

VII. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Massachusetts Electric Company and Nantucket Electric Company shall comply with the directives of this Order; and it is

FURTHER ORDERED: That the Massachusetts Electric Company and Nantucket Electric Company shall submit tariffs consistent with this Order for electric service consumed on or after March 1, 1998.

FURTHER ORDERED: That tariffs consistent with this Order submitted by the Massachusetts Electric Company and Nantucket Electric Company shall not be effective until and unless approved by the Department.

By Order of the Department,

_____
Janet Gail Besser, Chair

_____
John D. Patrone, Commissioner

_____
James Connelly, Commissioner